


POLICY BULLETIN (PB)			
Subject: Standards for Attorneys in Revocation Proceedings (CN 426)			
PB Number:			
	California Department of Corrections and Rehabilitation Division of Juvenile Justice	Manual: <input type="checkbox"/> Administrative (YAM) <input type="checkbox"/> Education Services (ES) <input checked="" type="checkbox"/> Institutions and Camps (I&C) <input checked="" type="checkbox"/> Parole Services (PS) <input type="checkbox"/> Special Education (SE)	Revision #: Section #: <div style="text-align: right;">6154.5 5560</div>

The purpose of this Policy Bulletin (PB) is to provide all Division of Juvenile Justice (DJJ) Institutions and Camps and Paroles Services manual holders with information regarding the attached revised DJJ policy for Standards for Attorneys in Revocation Proceedings.

This is the annual review and the policy revisions were required for compliance with negotiated agreements between the parties in L.H. V. Schwarzenegger. Failure to implement the required amendments may result in exposure of CDCR to further litigation.

Instructions

This PB contains changes to the above referenced manual(s). To update your manual(s), please follow the directions below step by step.

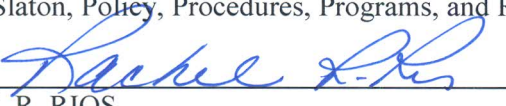
1. Locate the correct manual(s), as marked above.

2.	Remove	Insert	Special Instructions
	Standards for Attorneys in Revocation Proceedings, Institutions and Camps Manual, Section(s) #6154.5, Revision Date: 4/15/09	Standards for Attorneys in Revocation Proceedings, Institution and Camps Manual, Section #6154.5, Revision Date: 9/13/10	N/A
	Standards for Attorneys in Revocation Proceedings, Parole Services Manual, Section(s) #5560, Revision Date: 4/15/09	Standards for Attorneys in Revocation Proceedings, Parole Services Manual, Section #5560, Revision Date: 9/13/10	N/A
	N/A	Insert the forms behind index in numerical order.	For the most current versions of forms, go to: http://intranet/ops/JJ/Pages/Forms.aspx

3. Update the Revision Record Log (first page of the manual) using the revision number reference above.

This cover sheet does not need to be archived in the manual, only the attached items.

Please distribute to interested parties and make additional copies if necessary. Please direct any inquiries to Dolores Slaton, Policy, Procedures, Programs, and Regulations (PPP&R) Unit Manager, at (916) 262-1431.


RACHEL R. RIOS
Chief Deputy Secretary (A)


Approval Date

Attachment(s)



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

Manual

- ☐ Administrative (YAM)
- ☐ Education Services (ES)
- ☒ Institutions and Camps (I&C)
- ☒ Parole Services (PS)
- ☐ Special Education (SE)

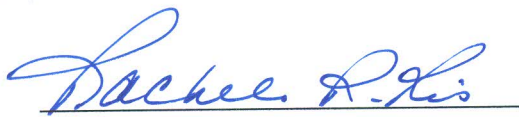
Section #

6154.5
5560

Replace(s)

N/A
N/A

**Signature/Approval
Date**


RACHEL R. RIOS
Chief Deputy Secretary (A)

10/7/10
Approval Date

Policy

The Juvenile Parole Board (JPB) shall ensure that attorneys appointed to represent parolees in revocation proceedings are competent and effective by establishing and enforcing minimum standards for administration of the attorney panel and by providing a process by which parolees can be represented by their own privately retained counsel or by the Public Defenders' Office.

Scope

The Division of Juvenile Parole Operations (DJPO), the JPB, and all attorneys who represent parolees in revocation proceedings including the Attorney Panel, Public Defenders, and privately retained counsel.

Authority

Welfare and Institutions Code, Section 224.71 (p)

**Related Standards/
References**

L.H. v. Schwarzenegger, Stipulated Order For Permanent Injunctive Relief, June 4, 2008

**Related Remedial
Plan or Court Order****Farrell Lawsuit**

- ☐ Safety and Welfare
- ☐ Education Services
- ☐ Wards with Disabilities Program
- ☐ Mental Health
- ☐ Health Care Services
- ☐ Sexual Behavior Treatment Program

Other Lawsuits & Court Orders

- ☒ L.H. Lawsuit
- ☐ Other: _

Requirements

This policy has a training requirement:
This policy has an audit requirement:
This policy has restricted distribution:
This policy requires annual review:
This policy requires a local procedure:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Revision Date(s)

9/13/10

Effective Date



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

DEFINITIONS

Board Coordinating Parole Agent - Division of Juvenile Parole Board agent responsible for coordination and facilitation of parole violation hearings, ensuring coordination and communication with counsel and witnesses, assisting with the provision of necessary accommodations and effective communication for parolees, and providing security at parole violation hearings.

Charges - Behaviors and corresponding codes describing the alleged violation(s) of parole conditions.

Charge Section - A section of the Violation Report, DJJ 3.264, that lists the alleged charges and includes an evidentiary narrative that describes the alleged behavior.

Confidential Informant - A person whose identity is not known to the parolee and whose status as a confidential informant has been established by an outside law enforcement agency.

Confidential Information - Any information that may lead to the identity of a Confidential Witness, or that, if disclosed, would present a threat to the safety and security of an institution/facility, or is part of an ongoing investigation that would be compromised if the information were disclosed. Information material to innocence or guilt that does not lead to the identity of the Confidential Witness in a pending revocation proceeding shall be disclosed.

Confidential Witness - A person whose identity is not known to the parolee and whose status as a confidential witness has been established by law enforcement or by an agent of the Division of Juvenile Parole Operations.

Corrective Action Plan - A treatment and supervision sanction in the community developed at the parole field unit level, imposed upon parolees in response to parole violations, for which detention is not warranted as an alternative to revocation.

Date of Discovery - The date that the Division of Juvenile Justice obtains knowledge that an alleged violation of parole has occurred.

Day(s) - Calendar days, unless otherwise specified.

Detention Criteria - Factors or behavior(s) that may demonstrate a need for detention.

- Parolee is a danger to himself/herself,
- Parolee is a danger to the person or property of another,
- Parolee is a risk to abscond from parole supervision, or
- Parolee's mental state has deteriorated to the point where it is likely that there is a threat to public safety.

Detention Section - A section of the Violation Report form, DJJ 3.264, summarizing reasons why the parolee meets detention criteria.

Developmental Disability - A condition attributable to a mental or physical impairment, manifested before age twenty-two, and likely to continue indefinitely, resulting in substantial limitation in three or more specified areas of



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

functioning (i.e., caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working) and will require specific and lifelong extended care.

Disability - A physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such impairment or condition; or being regarded as having such an impairment or condition.

Disciplinary Decision-Making System - Division of Juvenile Justice Facility disciplinary system which has the ability to impose a sanction, deprive a youth of something possessed, or deny something that a youth reasonably expects as part of his/her prescribed program because the youth commits an institutional rule or law violation.

Dismissal - Action required if there is insufficient evidence to support a probable cause finding at the Probable Cause Hearing, if there is insufficient admissible evidence to make a finding of good cause by a preponderance of the evidence at the Revocation Hearing or Revocation Extension Hearing, or in the interest of justice.

Disposition Section - A section of the Violation Report form, DJJ 3.264, recommending an appropriate disposition for the violation behavior and outlining reasons for the recommendation.

Dual Commitment - A person who is under the jurisdiction of both the Division of Juvenile Justice and the adult division of the California Department of Corrections and Rehabilitation.

Effective Communication - Communication with persons with disabilities or those with limited English skills and reading ability that is as effective as communication with others. Effective communication may require the use of an appropriate auxiliary aid or service, or may be achieved by methods such as speaking clearly or using simple language and soliciting feedback to ensure understanding.

Exit Interview - A meeting with a parole violator and a hearing officer of the Juvenile Parole Board prior to a parole violator's Revocation Release Date at which the general and special conditions of parole are issued and explained to the parole violator.

Expedited Probable Cause Hearing - A Probable Cause Hearing held at an earlier stage in the proceedings upon sufficient offer of proof by the parolee or his/her counsel that there is a complete defense to all parole violation charges that are the basis for the parole hold.

Fearful Witness - A person whose identity is known to the parolee, but who has indicated that he/she: 1) does not wish to testify; and 2) fears the risk of harm if he/she testifies at a hearing in the presence of the parolee.

Good Cause - Justifiable, legitimate and unforeseeable reason for delay, asserted in good faith and caused by factors that are beyond the control of the Division of Juvenile Parole Operations, the Juvenile Parole Board, or the Division of Juvenile Justice.

McPherson Status - Status applicable to a youth, juvenile parolee, or juvenile parole violator who is on adult parole or who has discharged from his/her adult case and has voluntarily consented to serve his/her juvenile commitment in an adult institution, which includes parole violations and revocation extensions.

Minor Victim/Witness - Any victim or witness under the age of eighteen (18).

Not in Custody - A parolee who is not on a Division of Juvenile Justice parole hold.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

'Not in Custody Hearing' - A revocation hearing for a parolee who is not under a Division of Juvenile Justice parole hold.

Notice of Charges form - An official action conducted by Division of Juvenile Justice staff to personally serve a parolee notice of the charges against him/her including a short factual summary of charged conduct.

Notice of Conditions of Parole form - A document that notifies a juvenile parolee of behavior and treatment requirements while under parole supervision.

Notice of Rights - An advisement to a parolee of his/her procedural and due process rights in parole revocation proceedings pursuant to the L.H. stipulated permanent injunction and State and federal constitutions.

Parole Hold - Any invocation by the Division of Juvenile Justice of their authority to involuntarily detain a parolee for revocation proceedings and/or commence revocation proceedings pursuant to Welfare & Institutions Code §1767.3. This term shall not apply to the detention of a parolee who has absconded from the State of California until he or she is physically returned to the State of California and is in custody.

Parole Placement Plans - A report prepared by the Division of Juvenile Parole Operations and provided to the Juvenile Parole Board in preparation for a parole violator's release to parole supervision, which includes but is not limited to: identified placement, recommended special conditions of parole, supervision plans, educational/vocational plans, and community treatment plans.

Parole Report - A report provided to the Juvenile Parole Board that is informational in nature or requests an administrative action other than a parole violation, including but not limited to requests to lift parole holds, continue on parole, and miscellaneous decisions.

Parole Violator - A parolee who violated a condition of parole, and who has been revoked and returned to custody.

Physical Impairment - A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more of the bodily systems.

Preponderance of Evidence - Standard of proof that requires a finding that it is more likely than not that a fact or charge is true.

Probable Cause - Facts as would lead a person of ordinary caution and prudence to conscientiously entertain a strong suspicion that an alleged charge is true.

Probable Cause Hearing - A hearing in which the juvenile parolee appears and at which it is determined whether there is probable cause to believe that the juvenile parolee has violated a condition of parole and, if so, whether the juvenile parolee should be detained during the revocation process.

Reasonable Accommodation - A modification or adjustment that will help provide equal access to programs, activities and services for parolees with disabilities or effective communication needs.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

Return to Custody Assessment - A recommended disposition offered by the Juvenile Parole Board which is presented to a parolee prior to a Probable Cause Hearing (also termed "the Offer").

Revocation Extension Hearing - The two-phase hearing (evidentiary and disposition) in which the parolee appears before the Juvenile Parole Board, at which it is determined whether the preponderance of the evidence shows that the parolee committed Willful Program Failure or Serious In-Custody Misconduct, and in which a parolee's parole revocation period may be extended. A parolee's parole revocation period may not be extended because of the Division of Juvenile Justice's failure to provide a recommended program at all or in a timely manner.

Revocation Hearing - A two-phase hearing (evidentiary and disposition) at which it is determined whether the preponderance of the evidence shows that the parolee violated a condition of parole and whether the parolee should be returned to parole supervision or remanded to custody.

Revocation Proceeding/Revocation Process - All stages of the process by which a parolee/parole violator may be returned to or retained in custody following an alleged parole violation up to and including the revocation or revocation extension hearing and any administrative appeal.

Revocation Release Date - The date in which a parole violator will be released to the community.

Revocation Release Report - A report prepared by the facility and provided to the Juvenile Parole Board in preparation for a parole violator's release to parole supervision, which includes but is not limited to: facility adjustment, demonstrated behaviors, treatment program participation and completion, accommodation/effective communication issues

Serious In-Custody Misconduct - In-custody behavior by a parole violator that poses an immediate and serious threat to the safety and security of youth, staff or property within the facility. (See Revocation Extension Matrix)

Sufficient Offer of Proof - A reasonable likelihood that a parolee would produce uncontroverted evidence of his/her innocence at an expedited probable cause hearing.

Supplemental Charges - Additional charges based on evidence discovered by the Division of Juvenile Parole Operations after the parole hold for detained cases or after the Notice of Rights step for Not-In-Custody cases.

Victim - A person against whom a parole violation has been committed.

Violation Levels:

Level I: Minor violations of parole for which detention may not be warranted.

Level II: Selected minor law violations, moderate technical violations, or repetitive Level I behavior for which detention may not be warranted.

Level III: Any behavior that the Division of Juvenile Parole Operations believes represents a risk or threat to public safety. Level 3 violations are mandatory referrals to the Juvenile Parole Board.

Violation Report form - A three-part report (Charge Section, Detention Section and Disposition Section) describing a parolee's alleged violations of parole and recommendations presented to the Juvenile Parole Board during parole revocation proceedings.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

Willful Program Failure - Repeated and intentional refusal to attend and/or participate in a treatment and training program. The repeated refusal shall be documented by treatment staff. Staff shall specify the dates of non-participation and shall include information demonstrating that the parole violator does not have a mental or physical impairment that prevents him/her from fully participating in the program. A parole violator shall not be charged with willful program failure when program unavailability, facility lockdown, instructor absence or other circumstances beyond the parole violator's control prevent him/her from completing the program prior to the expiration of his/her revocation term.

TRAINING

Training and continuing education for state-appointed counsel shall include the due process rights of Juvenile Parolees, the practice of representing parolees before the JPB, substantive law, interview techniques, presentation of evidence, oral advocacy skills, ethics, institutional security, effective communication and disability accommodations. They shall also be familiarized with the general requirements of the L.H. Stipulated Permanent Injunction, policies and procedures developed pursuant thereto. All policies and procedures shall be made available on-line to all panel and non-panel attorneys.

Such training shall be provided by the Attorney Panel to all of its staff attorneys, contract attorneys, certified law students, and support staff using lecture and practical exercise components, with the input and approval of the Division of Juvenile Justice. The lesson plans for L.H. training shall be submitted to the Division of Juvenile Justice for review and approval.

The Attorney Panel administrators, staff attorneys, and contract attorneys may participate in related training provided by the Division of Juvenile Justice (DJJ) or the California Department of Corrections and Rehabilitation (CDCR). Non-panel attorneys, including private counsel and Juvenile Court appointed defense counsel, may attend training and/or access training materials at a nominal cost. Attorneys may contact the JPB for a current schedule of trainings and training materials.

GOAL(S)

To provide effective and competent counsel to represent all juvenile parolees in parole revocation and revocation extension proceedings, including administrative appeals.

QUALITY ASSURANCE

Monitoring of timely appointment of counsel will be accomplished through the tracking and reporting component of a computerized, statewide, real-time networked database tracking and reporting system known as Juvenile Scheduling and Tracking System (JSTS). The effective assistance of counsel shall be accomplished by observations of all attorneys conducting hearings. This may include but is not limited to randomly selecting hearing tapes for review in addition to on site observation and critique. To ensure compliance with the terms of the policies and procedures developed pursuant to the L.H. Stipulated Permanent Injunction, the DJJ shall establish a compliance and self-monitoring team.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

PROCEDURES

1.0 Minimum Attorney Standards

- 1.1. The Juvenile Parole Board (JPB) will automatically appoint an Attorney Panel contractor to represent each parolee in parole revocation proceedings up to and including any administrative appeals.
- 1.2. In the alternative, a parolee may be represented in parole revocation proceedings by counsel of his or her own choosing, including his or her public defender or other appointed counsel, retained counsel, or pro bono counsel.
- 1.3. Attorneys representing parolees who are not members of the Attorney Panel shall have the same rights and responsibilities under these policies and procedures developed pursuant to the L.H. Stipulated Permanent Injunction as counsel appointed by the Division of Juvenile Justice (DJJ), except as to compensation.
- 1.4. Any attorney who represents parolees or parole violators shall be active members in good standing with the California State Bar Association and exhibit the willingness, skills, and ability to perform the required legal services. Attorneys are expected to zealously represent each client while providing representation that adheres to the California Rules of Professional Conduct, the DJJ policies and procedures, and the safety and security protocols of each facility, institution or county jail.
- 1.5. During the course of the representation, attorneys at a minimum shall:
 - 1.5.1. Adhere to the security protocols established at DJJ facilities, California Department of Corrections and Rehabilitation (CDCR) institutions, and county jails.
 - 1.5.2. Use effective communication, as necessary to ensure the client understands the revocation process, the charges, any defenses to those charges and any potential disposition including but not limited to the Return to Custody Assessment (RTCA).
 - 1.5.3. Advise the parolee/parole violator fully regarding possible options and defenses.
 - 1.5.4. Protect the confidentiality of both attorney-client communication and parolee/parole violator information.
 - 1.5.5. Protect the confidentiality of witness contact information by redacting the copy of the revocation packet that is provided to the parolee/parole violator.
 - 1.5.6. Keep the client informed as to the charges, the evidence against him/her and the offers that have been proposed by the JPB. Attorneys are required to communicate with their clients as often as needed and practicable.
 - 1.5.7. Identify any previously undetected mental, physical, or cognitive disabilities that may require an accommodation.
 - 1.5.8. Negotiate appropriate dispositions with the JPB at the Probable Cause Hearing in the presence of the parolee/parole violator, including alternatives to incarceration.
 - 1.5.9. Explain the risks and benefits of optionally waiving a Revocation or Revocation Extension Hearing to clients with pending criminal charges, and, when appropriate, assist them to exercise that right.
 - 1.5.10. Preserve the client's constitutional rights.
 - 1.5.11. Investigate the allegations and possible defenses including any circumstances in mitigation that may be presented on a parolee or parole violator's behalf.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

- 1.5.12. Obtain and present documentary evidence in defense and/or mitigation of the charges, including relevant records from the client's files.
 - 1.5.13. Select and interview witnesses to be called at the Revocation or Revocation Extension Hearing.
 - 1.5.14. Make relevant, appropriate legal objections.
 - 1.5.15. Make a record to preserve avenues of appeal or habeas review.
 - 1.5.16. Prepare administrative appeals, as necessary and/or appropriate.
 - 1.5.17. Comply with these and related DJJ Policies and Procedures, which will be provided by the JPB.
- 1.6. To the extent possible, the same attorney is to represent the parolee/parole violator from the beginning of the case at the consultation stage until the end of the case in the event of postponement, continuances, or appeal of the revocation/revocation extension decision.
 - 1.7. In order to accept the responsibility of representing a parolee/parole violator in revocation or revocation extension proceedings, the attorney must be available to:
 - 1.7.1. Interview the client on or before the twelfth (12th) business day after the parole hold is placed for revocation cases or on or before the twelfth (12th) business day after the notice of charges for revocation extension cases.
 - 1.7.2. Represent the client at the Probable Cause Hearing (PCH) on or before the thirteenth (13th) business day after the parole hold for revocation cases or the notice of charges for revocation extension cases, or thereafter if the PCH is held beyond the 13th business day.
 - 1.7.3. Represent the client at the Revocation/Revocation Extension Hearing on or before the thirty-fifth (35th) day after the placement of the hold for revocation cases or the notice of charges for revocation extension cases, or thereafter if the Revocation/Revocation Extension Hearing is held beyond the 35th business day.
 - 1.7.4. Travel to a Revocation Hearing location, which shall be within fifty (50) miles of the location of the alleged parole violation, or travel to a Revocation Extension Hearing location.
 - 1.7.5. Represent parolees/parole violators during the non-appearance administrative appeals process if there are grounds for such an appeal.
 - 1.8. Attorneys are obligated to decline a parole revocation or revocation extension case when that case will create a legal conflict of interest. If after accepting a case, the attorney identifies a potential legal conflict that was not previously detected; he/she shall bring it to the attention of the JPB, or to a senior staff attorney of the Attorney Panel if the attorney is a member of the contract attorney panel. An alternate attorney shall immediately be assigned to represent the parolee/parole violator, and all files including but not limited to the results of any investigation or legal research shall be provided to the newly appointed attorney.

2.0 Notification to Counsel of Record of a Parole Hold

- 2.1. The Division of Juvenile Parole Operations (DJPO) shall provide notification of the imposition of a parole hold to a parolee's counsel of record, as listed on the Attorney of Record Designation form, DJJ 3.295, and/or court commitment documents, by the close of the fourth (4th) business day after a parole hold is placed. This shall be accomplished pursuant to the DJPO "Parole Violation Process" policies and procedures (ref CN-410). Consistent with revocation proceedings policies, the day of the



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

hold will be deemed "day zero". The next business day will be "day one" of the four-business day timeframe.

3.0 Appointment of Counsel

- 3.1. No later than the eighth (8th) business day following the parole hold for revocation cases or the notice of charges for revocation extension cases, and upon receipt of a revocation or revocation extension packet, the JPB will automatically appoint the Attorney Panel to represent a parolee or parole violator in parole revocation or revocation extension proceedings up to and including the administrative appeal, if applicable.

4.0 Substitution of Counsel

- 4.1. As an alternative, a parolee/parole violator may be represented by counsel of his or her choosing. However, in order for the JPB to recognize this representation in lieu of an appointment from the Attorney Panel, the attorney seeking to represent the parolee/parole violator shall:
 - 4.1.1. Confer with the parolee/parole violator to ensure his/her consent to the substitution.
 - 4.1.2. Contact the JPB by fax or telephone to notify the JPB of the substitution as the parolee/parole violator's counsel. The JPB shall immediately fax or email a blank Intention of Counsel form, DJJ 3.294, and an L.H. Protective Order Notice and Acknowledgement form, DJJ 3.298, to the requesting attorney.
 - 4.1.3. Deliver the completed Intention of Counsel form and signed L.H. Protective Order Notice and Acknowledgement form to the JPB.
- 4.2. Upon receipt of the completed Intention of Counsel and L.H. Protective Order Notice and Acknowledgement forms, the JPB Revocation Desk shall:
 - 4.2.1. Document the substitution of counsel in an internal tracking database.
 - 4.2.2. Immediately fax a copy of the Intention of Counsel and L.H. Protective Order Notice and Acknowledgement forms to the Attorney Panel administrator in order to notify it of the substitution of counsel.
 - 4.2.3. Fax a copy of the Intention of Counsel and L.H. Protective Order Notice and Acknowledgement forms to the parole unit or facility for inclusion in the parolee/parole violator's field file.
 - 4.2.4. Forward the following documents to the parolee/parole violator's counsel via overnight mail, or via scanning and email if available:
 - 4.2.4.1. A copy of the revocation or revocation extension packet.
 - 4.2.4.2. Request for Witnesses worksheet form, DJJ 3.271.
 - 4.2.4.3. Parolee-Attorney Decision form, DJJ 3.273.
 - 4.2.5. Any additional documents that the JPB receives after initial submission to the attorney shall be produced as soon as possible after its receipt.

5.0 Receipt and Processing of the Revocation/Revocation Extension Packet by the Attorney Panel.

- 5.1. Receipt of the Revocation Packet



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

- 5.1.1. On the eighth (8th) business day following the parole hold for in-custody revocation cases, or the notice of charges for revocation extension cases, the JPB Scheduler will notify the parolee/parole violator's attorney of the date, time, and location of the Probable Cause Hearing via email. For appointed attorneys on the Attorney Panel, this email will also serve as notification that the revocation/revocation extension packet is available to be viewed in JSTS. For non-appointed attorneys including public defenders, the revocation/revocation extension packet will be sent via overnight mail, fax or email (as requested) upon receipt of a completed Intention of Counsel form (DJJ 3.294) and L.H. Protective Order Notice and Acknowledgment form (DJJ 3.298).
- 5.1.2. JPB shall be deemed to have appointed counsel for a parolee/parole violator the day the JPB Scheduler informs the Attorney Panel of a case available in JSTS.
- 5.1.3. Any additional documents or other evidence that the JPB receives after initial submission to the attorney shall be produced as soon as possible after its receipt. Evidence or documents not provided to the parolee/parole violator's counsel at least forty-eight (48) hours prior to the hearing shall not be admitted or considered in the hearing unless the DJJ can show good cause for the delay.
- 5.2. Processing of the Revocation/Revocation Extension Packet by the Attorney Panel
 - 5.2.1. Upon receipt of the revocation packet, the Attorney Panel shall ensure that the following information, at a minimum, is entered and tracked in the Attorney Panel's Tracking (APT) database:
 - 5.2.1.1. The date that the Attorney Panel received the packet,
 - 5.2.1.2. The parolee/parole violator's name and Youth Authority number,
 - 5.2.1.3. The date of the parole hold for revocation cases, or the date of the notice of charges for revocation extension cases,
 - 5.2.1.4. The need for disability accommodation or effective communication assistance
 - 5.2.1.5. The name of the attorney assigned to the case.
 - 5.2.2. The Attorney Panel shall communicate the name of the attorney assigned to each case to the JPB, which the JPB Revocation Desk shall document in an internal tracking database.
- 5.3. Preparation for Representing a Parolee
 - 5.3.1. Representation of the parolee, no matter the affiliation of counsel, shall at a minimum, require that counsel:
 - 5.3.1.1. Redact all confidential information from the parolee's copy of the revocation packet. Attorneys must ensure that the parolee's copy has been completely redacted of witness and victim contact information, including telephone numbers and addresses. This is a legal obligation placed on the attorney by a federal court protective order. Attorneys will ensure that only completely redacted copies are given to the client. Attorneys will also ensure that no un-redacted material is discarded at a county jail site, DJJ facility, or CDCR institution.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

- 5.3.1.2. Notify the JPB of the need for an expedited Probable Cause Hearing if there is sufficient proof that the client has a complete defense to all parole violation charges that are the basis of the hold.
- 5.3.1.3. Review the Request for Accommodation and Assistance form, DJJ 3.260, and all attached source documents prior to meeting with the parolee to determine if an interpreter or other accommodation is needed for the attorney-client interview and hearings.
- 5.3.1.4. Contact the JPB ADA Coordinator via telephone prior to meeting with the parolee to request the services of a sign language or foreign language interpreter if one is needed for the attorney-client interview and hearings as soon as any such need is identified.
- 5.3.1.5. Ensure that the parolee is provided any requested accommodation for the attorney-client interview. If the attorney discovers that a requested accommodation does not achieve effective communication or participation, the attorney shall contact the JPB ADA Coordinator via phone to arrange for an alternative accommodation as soon as possible and in any event prior to the scheduled hearing.
- 5.3.1.6. Schedule an attorney-client interview to be conducted at least the day before the scheduled Probable Cause Hearing.
- 5.3.1.7. Provide the client with a telephone number where counsel may be contacted.
- 5.3.1.8. Communicate the Return to Custody Assessment (RTCA) to the parolee during the attorney-client interview. The Attorney Panel is allowed read-only access to JSTS, DJJ's secured tracking system, so that they will have immediate access to the Summary of Revocation Decision: Return to Custody Assessment (RTCA) form, DJJ 3.276-RTCA, once it becomes available, no later than ten (10) business days following the parole hold.
 - 5.3.1.8.1. Other Counsel: If there has been a substitution of counsel, the JPB Revocation Desk shall communicate the RTCA to the parolee's counsel via fax or email, no later than the tenth (10th) business day following the parole hold.
- 5.3.1.9. The attorney shall notify the JPB ADA Coordinator of any needed, but previously unidentified disability or effective communication accommodation need that is brought to the attorney's attention during the attorney-client representation to ensure appropriate accommodations at the Probable Cause and Revocation Hearings.
- 5.3.2. If the attorney believes that necessary accommodations of the parolee's disabilities or need for effective communication will not be provided despite his or her request for the accommodation, the parolee and/or the attorney shall submit an Accommodation and Assistance Grievance form, DJJ 3.261, pursuant to the procedures outlined in the Accommodations and Effective Communication in Revocation Proceedings policy (ref CN-418).
- 5.3.3. If the hearing has already taken place and such accommodations were not provided, the parolee and/or the attorney may submit an Accommodation and Assistance Appeal form, DJJ



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

3.261A, pursuant to the procedures outlined in the Accommodations and Effective Communication in Revocation Proceedings policy (ref CN-418).

6.0 Optional Waiver

- 6.1. A parolee/parole violator who is undergoing criminal prosecution may conditionally waive the Revocation or Revocation Extension Hearing, but retains the option to request a hearing. Upon receipt of a signed Parolee-Attorney Decision form, DJJ 3.273, on which the parolee/parole violator has elected to optionally waive his/her Revocation or Revocation Extension Hearing, parole will be revoked or extended for the period indicated on the Parolee-Attorney Decision form, DJJ 3.273.
 - 6.1.1. A parolee who signs an optional waiver may later request a Revocation/Revocation Extension Hearing. A parolee/parole violator is entitled to no more than one (1) activation of an optional waiver unless the parolee/parole violator's attorney represents that the activation was requested in error.
 - 6.1.2. A hearing request must be received by the Juvenile Parole Board (JPB) or postmarked no later than thirty-five (35) days before expiration of the revocation period ordered by the JPB.
 - 6.1.3. Upon receipt of a hearing request, the JPB shall schedule a Revocation/Revocation Extension Hearing. At the hearing, the hearing officer may take any appropriate action not to exceed the RTCA/REA.
- 6.2. At the Probable Cause Hearing
 - 6.2.1. At the Probable Cause Hearing, in the presence of the hearing officer and with the assistance of his/her attorney, a parolee/parole violator may:
 - 6.2.1.1. Accept the RTCA/REA or an alternative offer made by the hearing officer at the probable cause hearing,
 - 6.2.1.2. Reject the RTCA/REA and request a Revocation/Revocation Extension Hearing,
 - 6.2.1.3. Conditionally accept the RTCA/REA and optionally waive the Revocation/Revocation Extension Hearing. In order for the parolee/parole violator to be eligible to optionally waive his/her Revocation/Revocation Extension Hearing, charges must have been filed on a charge that is the same behavior as one or more of the violation charges. Information that the District Attorney is considering filing charges is insufficient to allow the parolee to optionally waive his/her Revocation/Revocation Extension Hearing.
 - 6.2.2. If, at the time of the Probable Cause Hearing, the parolee/parole violator has pending court charges on one or more of the violation/revocation extension charges, the parolee/parole violator's attorney will explain and discuss the optional waiver process with the parolee/parole violator. If the parolee/parole violator chooses to optionally waive the Revocation/Revocation Extension Hearing, the hearing officer will have the parolee/parole violator indicate his/her decision and sign the Parolee-Attorney Decision form, DJJ 3.273, and RTCA form, DJJ 3.276-RTCA/REA form, DJJ 3.278-REA. The Board Coordinating Parole Agent will provide the parolee/parole violator with an Optional Waiver Activation Card form, DJJ 3.280, which the parolee will send in to the JPB to activate the optional waiver if the parolee/parole violator so chooses at a later date.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

6.3. Activating the Optional Waiver

- 6.3.1. A parolee may request the revocation process to resume on the violation charges that had been waived. In order to do this, the parolee sends the JPB Revocation Desk an Optional Waiver Activation Card form, DJJ 3.280, or written notification requesting a Revocation Hearing. Upon receipt of the parolee's request to activate the optional waiver, the written request shall be stamped with the date received and a Revocation Hearing shall be scheduled within thirty-five (35) days from the date of receipt.

NOTE: Parolees may activate their optional waivers at any time prior to or after completion of their court case, so long as it is not within thirty-five (35) Days of his/her Revocation Release Date.

7.0 **Role of Counsel in Revocation Proceedings**

7.1. Probable Cause Hearings

- 7.1.1. During the Probable Cause Hearing, the attorney may:
- 7.1.1.1. Exercise an optional waiver, documented on the Parolee-Attorney Decision form, DJJ 3.273.
 - 7.1.1.2. Make any preliminary objections or present any legal cause that there may be for not conducting the Probable Cause Hearing.
 - 7.1.1.3. Enter pleas ("admit", "deny", or "no plea") on behalf of the parolee as to each charge.
 - 7.1.1.4. Present oral, physical or documentary evidence.
 - 7.1.1.5. Make legal and factual arguments as to why there is no probable cause to believe that the client committed the charged conduct.
 - 7.1.1.6. Advise his or her client of the right to speak or not speak directly to the hearing officer on his or her own behalf.
 - 7.1.1.7. Make legal and factual arguments as to why there is no probable cause to believe that the client should be kept in custody pending the Revocation Hearing.
 - 7.1.1.8. Present evidence in mitigation.
 - 7.1.1.9. Negotiate appropriate dispositions with the JPB, including alternatives to incarceration.
 - 7.1.1.10. If probable cause is found, inform the hearing officer whether the parolee wishes to accept the RTCA or an alternative offer made by the hearing officer at the Probable Cause Hearing. This decision shall be documented on the Parolee-Attorney Decision form, DJJ 3.273.
- 7.1.2. In the event that a parolee refuses to attend a probable cause hearing,
- 7.1.2.1. Counsel may still accept or reject the RTCA/alternative offer given by the hearing officer at the Probable Cause Hearing. Acceptance of the RTCA/alternative offer requires the parolee's signature and representation from counsel that the offer and any consequences were fully explained to and understood by his/her client and that the client made a knowing and intelligent waiver of his/her right to a Revocation Hearing. In order to obtain such a waiver, an attorney may request a



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

postponement or delay of the Probable Cause Hearing if necessary. If the RTCA/alternative offer is rejected and the parolee's refusal to participate in the Probable Cause Hearing is documented, the parolee's case will be set for a Revocation Hearing.

- 7.1.2.2. Counsel is responsible for transmitting to his/her client any hearing documents or orders from the Probable Cause Hearing. Counsel shall also communicate with and explain to his/her client any relevant information from the hearing as well as information contained in the hearing documents.

7.2. Scheduling the Revocation Hearing

- 7.2.1. If the RTCA or alternative disposition is not accepted and a Revocation Hearing needs to be scheduled to occur within thirty-five (35) calendar days from the placement of the parole hold, the Board Coordinating Parole Agent will contact the JPB Scheduler telephonically to secure a date and time for the Revocation Hearing. The parolee and his/her attorney will be provided the date and time of the Revocation Hearing at the Probable Cause Hearing.

7.3. Subpoenaing Witnesses to Appear at the Revocation Hearing

- 7.3.1. At the conclusion of the Probable Cause Hearing, the attorney shall:
 - 7.3.1.1. Provide the hearing officer with a list of witnesses the attorney is requesting on behalf of the parolee for the Revocation Hearing on the Request for Witnesses worksheet form, DJJ 3.271.
 - 7.3.1.2. Discuss the witness list with the hearing officer and, if requested by the hearing officer, make an offer of proof as to why each witness is relevant and necessary.
 - 7.3.1.3. Attorneys for parolees shall be responsible for issuing subpoenas for all witnesses, physical evidence and documents requested by the parolee to appear at the Revocation Hearing.
 - 7.3.1.4. Once the witness list has been finalized and approved by the hearing officer, the Board Coordinating Parole Agent shall provide sufficient signed blank Subpoena form, DJJ 1.300, and/or Subpoena Duces Tecum form, DJJ 3.287 forms to the parolee's attorney. These subpoenas have the same authority, methods of enforcement, and provision for witness compensation as the subpoenas used directly by the JPB to obtain the presence of its witnesses.
 - 7.3.1.5. If, after the Probable Cause Hearing, the attorney becomes aware of a witness who should be called or of documents or physical evidence that should be subpoenaed, the attorney shall notify the JPB Revocation Desk orally or in writing. That notice shall include the name of the witness and a brief explanation of why they are necessary. Prior approval by a hearing officer is necessary before the attorney may issue any witness subpoena.
 - 7.3.1.6. If a witness who was not approved is present at the hearing, it is within the discretion of the presiding hearing officer to determine if the witness will be permitted to testify.

7.4. Revocation Hearings



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

- 7.4.1. To the extent possible, the same attorney is to represent the parolee from the beginning of the case at the consultation stage until the end of the case even in the event of postponement, continuances or any other reason for delay, or appeal of the revocation decision. The Attorney Panel shall make best efforts to provide the same counsel for the Revocation Hearing that was present at the Probable Cause Hearing.
- 7.4.2. During the Revocation Hearing, the attorney may:
 - 7.4.2.1. Exercise an optional waiver should local charges have been filed in the interim between the Probable Cause Hearing and the Revocation Hearing, documented on the Parolee-Attorney Decision form, DJJ 3.273.
 - 7.4.2.2. Make any preliminary objections or present any legal cause that there may be for not conducting the Revocation Hearing.
 - 7.4.2.3. Challenge the 'confidential' or 'fearful' designation of any witness. Upon challenge, the hearing officer shall make a determination regarding the designation.
 - 7.4.2.4. Enter pleas ("admit", "deny", or "no plea") on behalf of the parolee as to each charge.
 - 7.4.2.5. Advise his or her client of the right to speak or not speak directly to the hearing officer on his/her own behalf.
 - 7.4.2.6. Cross-examine any of the State's witnesses.
 - 7.4.2.7. Make any relevant evidentiary objections.
 - 7.4.2.8. Call the parolee's evidentiary witnesses and present any documentary or physical evidence.
 - 7.4.2.9. Make legal and factual arguments as to why the State may not have met its burden of proof on each charge.
 - 7.4.2.10. If the hearing officer sustains the charges, present the parolee's disposition witnesses and present any oral, documentary or physical evidence in mitigation.
 - 7.4.2.11. Make a closing argument.
- 7.4.3. In the event that a parolee refuses to attend the Revocation Hearing:
 - 7.4.3.1. Counsel, absent good cause shown for a continuance, shall proceed with the hearing.
 - 7.4.3.2. Counsel is responsible for transmitting to his/her client any hearing documents or orders from the hearing. Counsel shall also communicate with and explain to his/her client any relevant information regarding the hearing as well as information contained in the hearing documents.

8.0 Role of Counsel in Revocation Extension Proceedings

- 8.1. The DJJ addresses youth discipline through the Disciplinary Decision Making System (DDMS). DDMS provides a graduated system of youth discipline designed to be administered commensurate with the seriousness of the offense. Parole violators will be subject to Level 1, Level 2, and Level 3 DDMS that do not extend the Revocation Release Date (RRD).



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

- 8.2. Extensions of the RRD shall not occur except in circumstances of serious in-custody misconduct or willful program failure. Any recommendation for an extension to a RRD shall be referred to the Juvenile Parole Board (JPB) for revocation extension proceedings.
- 8.3. The DJJ will determine the length of time remaining before the RRD and this will be noted in the revocation extension packet. The parole violator shall be afforded a Probable Cause Hearing and all relevant time frames shall apply.
- 8.4. Revocation Extension Probable Cause Hearing
 - 8.4.1. Representation of the parole violator during revocation extension proceedings, shall at a minimum, require that counsel:
 - 8.4.1.1. Redact all confidential information from the parole violator's copy of the revocation extension packet.
 - 8.4.1.1.1. Attorneys must ensure that the parole violator's copy has been completely redacted of witness and victim contact information, including telephone numbers and addresses. This is a legal obligation placed on the attorney by a federal court protective order. Attorneys will ensure that only completely redacted copies are given to the client. Attorneys will also ensure that no un-redacted material is discarded at a county jail site, DJJ facility, or CDCR institution.
 - 8.4.1.2. Review the Request for Accommodation and Assistance form, DJJ 3.260, and all attached source documents prior to meeting with the parole violator to determine if an interpreter or other accommodation is needed for the attorney-client interview and hearings.
 - 8.4.1.2.1. Contact the JPB ADA Coordinator via telephone prior to meeting with the parole violator to request the services of a sign language or foreign language interpreter if one is needed for the attorney-client interview and hearings as soon as any such need is identified.
 - 8.4.1.2.2. Ensure that the parole violator is provided any requested accommodation for the attorney client interview. If the attorney discovers that a requested accommodation does not achieve effective communication or participation, the attorney shall contact the JPB ADA Coordinator via phone to arrange for an alternative accommodation as soon as possible and in any event prior to the scheduled hearing.
 - 8.4.1.3. Communicate the Revocation Extension Assessment (REA) to the parole violator during the attorney-client interview.
 - 8.4.1.4. The Attorney Panel: The Attorney Panel is allowed read-only access to JSTS, DJJ's secured tracking system, so that they will have immediate access to the REA form, DJJ 3.278-REA, once it becomes available, no later than ten (10) business days following the date of notice to the parole violator.
 - 8.4.1.5. Other Counsel: If there has been a substitution of counsel, the JPB Revocation Desk shall communicate the REA to parole violator's counsel via fax or email, no later than the tenth (10th) business day following the date of notice to the parole violator.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

- 8.4.1.6. The attorney shall notify the JPB ADA Coordinator of any needed, but previously unidentified disability or effective communication accommodation that is brought to the attorney's attention during the attorney-client representation to ensure appropriate accommodations at the Revocation Extension Probable Cause Hearing.
 - 8.4.1.6.1. If the attorney believes that necessary accommodations of the parole violator's disabilities or need for effective communication will not be provided despite his or her request for the accommodation, the parole violator and/or attorney shall submit an Accommodation and Assistance Grievance form, DJJ 3.261, pursuant to the procedures outlined in the Accommodations and Effective Communication in Revocation Proceedings policy (ref CN-418).
 - 8.4.1.6.2. If the hearing has already taken place and such accommodations were not provided, the parole violator and/or attorney may submit an Accommodation and Assistance Appeal form, DJJ 3.261A, pursuant to the procedures outlined in the Accommodations and Effective Communication in Revocation Proceedings policy (ref CN-418).
- 8.4.2. On or before the thirteenth (13th) business day following the date of notice to the parole violator, a Revocation Extension Probable Cause Hearing shall be held. A JPB hearing officer, Board Coordinating Parole Agent, and the parole violator represented by his/her attorney, shall be present. The Revocation Extension Probable Cause Hearing may not be audio or video recorded.
- 8.4.3. The purpose of the Revocation Extension Probable Cause Hearing is: (1) to determine whether there is probable cause to believe that the parole violator has committed serious in-custody misconduct or meets the criteria for willful program failure; and (2) to attempt to resolve the case at an early stage in the proceedings. The State has the burden of proof to establish probable cause.
- 8.4.4. During the Revocation Extension Probable Cause Hearing, the attorney may:
 - 8.4.4.1. Exercise an optional waiver, documented on the Parolee-Attorney Decision form, DJJ 3.273.
 - 8.4.4.2. Make any preliminary objections or present any legal cause that there may be for not conducting the Revocation Extension Probable Cause Hearing.
 - 8.4.4.3. Enter pleas ("admit", "deny", or "no plea") on behalf of the parolee as to the charge.
 - 8.4.4.4. Present oral, physical or documentary evidence.
 - 8.4.4.5. Make legal and factual arguments as to why there is no probable cause to believe that the client committed the charged conduct.
 - 8.4.4.6. Advise his or her client of the right to speak or not speak directly to the hearing officer on his or her own behalf.
 - 8.4.4.7. Present evidence in mitigation.
 - 8.4.4.8. Seek a disposition different from the REA.
 - 8.4.4.9. If probable cause is found, inform the hearing officer whether the parole violator wishes to accept the REA or an alternative disposition offered at the hearing



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

(document on the Parolee-Attorney Decision form, DJJ 3.273), or schedule a Revocation Extension Hearing.

8.4.5. In the event that a parole violator refuses to attend a revocation extension probable cause hearing,

8.4.5.1. Counsel may still accept or reject the REA/alternative offer given by the hearing officer at the Probable Cause Hearing. Acceptance of the REA/alternative offer requires the parole violator's signature and representation from counsel that the offer and any consequences were fully explained to and understood by his/her client and that the client made a knowing and intelligent waiver of his/her right to a Revocation Extension Hearing. In order to obtain such a waiver, an attorney may request a postponement or delay of the Probable Cause Hearing if necessary. If the REA/alternative offer is rejected and the parolee's refusal to participate in the Probable Cause Hearing is documented, the parole violator's case will be set for a Revocation Extension Hearing.

8.4.5.2. Counsel is responsible for transmitting to his/her client any hearing documents or orders from the Probable Cause Hearing. Counsel shall also communicate with and explain to his/her client any relevant information from the hearing as well as information contained in the hearing documents.

8.5. Scheduling the Revocation Extension Hearing

8.5.1. If the REA is not accepted and a Revocation Extension Hearing needs to be scheduled to occur within thirty-five (35) calendar days following the date of notice to the parole violator, the Board Coordinating Parole Agent will contact the JPB Scheduler telephonically to secure a date and time for the Revocation Extension Hearing. The parole violator and his/her attorney will be provided the date and time of the Revocation Extension hearing at the Revocation Extension Probable Cause Hearing.

8.6. Subpoenaing Witnesses to Appear at the Revocation Extension Hearing

8.6.1. At the conclusion of the Revocation Extension Probable Cause hearing, the attorney shall:

8.6.1.1. Provide the hearing officer with a list of witnesses the attorney is requesting on behalf of the parole violator for the Revocation Extension Hearing on the Request for Witnesses worksheet form, DJJ 3.271.

8.6.1.2. Discuss the witness list with the hearing officer and, if requested by the hearing officer, make an offer of proof as to why each witness is relevant and necessary.

8.6.2. Attorneys for parole violators shall be responsible for issuing subpoenas for all witnesses, physical evidence and documents requested by the parole violator to appear at the Revocation Extension Hearing.

8.6.3. Once the witness list has been finalized and approved by the hearing officer, the Board Coordinating Parole Agent shall provide sufficient signed blank Subpoena form, DJJ 1.300, and/or Subpoena Duces Tecum form, DJJ 3.287SP, forms to the parole violator's attorney. These subpoenas have the same authority, methods of enforcement, and provision for witness



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

compensation as the subpoenas used directly by the Juvenile Parole Board (JPB) to obtain the presence of its witnesses.

- 8.6.4. If, after the Revocation Extension Probable Cause Hearing, the attorney becomes aware of a witness who should be called or of documents or physical evidence that should be subpoenaed; the attorney shall notify the JPB Revocation Desk orally or in writing. That notice shall include the name of the witness and a brief explanation of why the witness is necessary. Prior approval by a hearing officer is necessary before the attorney may issue any witness subpoena.
- 8.6.5. If a witness who was not approved is present at the hearing, it is within the discretion of the presiding hearing officer to determine if the witness will be permitted to testify.
- 8.7. Revocation Extension Hearing
 - 8.7.1. The Revocation Extension Hearing shall be held on or before the thirty-fifth (35th) calendar day following the date of notice to the parole violator, absent good cause. A Juvenile Parole Board hearing officer, Board Coordinating Parole Agent, the parole violator represented by his/her attorney, and requested witnesses shall be present. This hearing shall be audio recorded.
 - 8.7.2. The Revocation Extension Hearing is a two-phase hearing (evidentiary and disposition) at which it is determined whether the preponderance of the evidence shows that the parole violator committed serious in-custody misconduct or meets the criteria for willful program failure and whether the parole violator should remain in custody beyond the RRD.
 - 8.7.3. The parole violator may only be charged with one act of serious in-custody misconduct or willful program failure for each revocation extension referral. However, the parole violator may be subject to additional revocation extension actions for future serious in-custody misconduct or willful program failure.
 - 8.7.4. At a Revocation Extension Hearing, the parole violator's period of revocation may be extended up to one (1) year consistent with the Revocation Extension Matrix. To the extent possible, the same attorney is to represent the parole violator from the beginning of the case at the consultation stage until the end of the case even in the event of postponement, continuance or any other reason for delay, or appeal of the revocation extension decision. The Attorney Panel shall make best efforts to provide the same counsel for the Revocation Extension Hearing that was present at the Revocation Extension Probable Cause Hearing.
 - 8.7.5. During the Revocation Extension Hearing, the attorney may:
 - 8.7.5.1. Exercise an optional waiver should local charges have been filed in the interim between the Revocation Extension, Probable Cause, Hearing and the Revocation Extension Hearing, documented on the Parolee-Attorney Decision form, DJJ 3.273.
 - 8.7.5.2. Make any preliminary objections or present any legal cause that there may be for not conducting the Revocation Extension Hearing.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

- 8.7.5.3. Challenge the 'confidential' or 'fearful' designation of any witness. Upon challenge, the hearing officer shall make a determination regarding the designation.
 - 8.7.5.4. Enter pleas ("admit", "deny", or "no plea") on behalf of the parole violator as to the charge.
 - 8.7.5.5. Advise his or her client of the right to speak or not speak directly to the hearing officer on his/her own behalf.
 - 8.7.5.6. Cross-examine any of the State's witnesses.
 - 8.7.5.7. Make any relevant evidentiary objections.
 - 8.7.5.8. Call the parole violator's evidentiary witnesses and present any documentary or physical evidence.
 - 8.7.5.9. Make legal and factual arguments as to why the State may not have met its burden of proof on the charge.
 - 8.7.5.10. If the hearing officer sustains the charge, present the parole violator's disposition witnesses and present any oral, documentary or physical evidence in mitigation.
 - 8.7.5.11. Make a closing argument.
- 8.7.6. In the event that a parolee refuses to attend the Revocation Extension Hearing:
- 8.7.6.1. Counsel, absent good cause shown for a continuance, shall proceed with the hearing.
 - 8.7.6.2. Counsel is responsible for transmitting to his/her client any hearing documents or orders from the hearing. Counsel shall also communicate with and explain to his/her client any relevant information regarding the hearing as well as information contained in the hearing documents.

9.0 Role of Counsel in Administrative Appeals

- 9.1. The administrative appeal is a non-appearance proceeding. A parolee/parole violator has the right to assistance of counsel in preparing an Appeal of Parole Revocation Decision form, DJJ 3.290, and at any new hearing granted pursuant to an appeal.
- 9.2. If a request has been made for the audio recording of a Revocation/Revocation Extension Hearing, the JPB shall provide a copy of the recording no later than ten (10) business days after receipt of the Request for Audio Recording form, DJJ 3.293. A written request for an audio recording shall be sent to the JPB LH Coordinator at the JPB headquarters office and can be made at any time after a Revocation or Revocation Extension hearing.
- 9.3. The parolee/parole violator, with or without the assistance of an attorney, however, must file his/her administrative appeal in writing within twenty (20) business days of receipt of the written hearing decision. This means administrative appeals must be received by the Juvenile Parole Board or postmarked within twenty (20) business days of receipt of the written hearing decision. The administrative appeal shall be sent to the Executive Officer at the JPB headquarters office:
 - 9.3.1. By the parolee/parole violator through the facility outgoing mail, which shall be mailed by the facility to the JPB no later than the close of business the following business day, or
 - 9.3.2. By the parolee/parole violator's attorney.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

9.4. Grounds for Appeal

- 9.4.1. An appeal may be based any of the following grounds. An appeal may not be denied because a parolee/parole violator incorrectly categorized the basis for his/her appeal.
 - 9.4.1.1. The decision of the Juvenile Parole Board was based on a mistake of law.
 - 9.4.1.2. The decision of the Juvenile Parole Board was based on a mistake of fact.
 - 9.4.1.3. The parolee was unable to understand the proceedings and/or provided ineffective assistance to counsel due to mental illness or other physical disability that was not adequately accommodated.
 - 9.4.1.4. The Juvenile Parole Board failed to provide an impartial hearing officer.
 - 9.4.1.5. The Juvenile Parole Board's decision was contrary to a Juvenile Parole Board policy and the outcome of the hearing would have been substantially different had the Juvenile Parole Board policy been followed.
 - 9.4.1.6. The audio recording of the hearing is inaudible.
 - 9.4.1.7. There are extraordinary circumstances involved in the case which require Juvenile Parole Board action in order to further the interests of justice.

9.5. The Appeal Decision

- 9.5.1. The Executive Officer of the JPB, or his/her designee, must decide the appeal within ten (10) business days after the day the appeal is received by the JPB.
- 9.5.2. The appeal decision will be written, and will address and respond to each issue raised by the parolee/parole violator in his/her appeal. The Executive Officer, or his/her designee, has discretion to immediately reverse a decision and grant appropriate relief, including release, discharge, continuation on parole, a reduction in the time assessed during the initial Revocation/Revocation Extension Hearing, or a new hearing.
- 9.5.3. Upon approval by the Executive Officer, or his/her designee, the written appeal decision shall be placed in first class mail to the parolee/parole violator and his/her attorney within one (1) business day of the appeal decision. In the case of the Attorney Panel, the written appeal decision shall be placed in the appropriate outbox for daily pickup within one (1) business day of the appeal decision. Upon request, DJJ staff shall provide any necessary accommodations to parolees/parole violators to ensure effective communication of the appeal response.
- 9.5.4. If the audio recording is inaudible, the parolee/parole violator shall be granted a new hearing. If the inaudibility of the audio recording is the sole basis for granting the new hearing, the JPB shall not order a term longer than the parolee/parole violator received at his/her initial hearing.
- 9.5.5. If the Executive Officer, or his/her designee, decides to grant a new hearing, the new hearing must be held within ten (10) business days after the issuance of the appeal decision.

10.0 Access to the Parolee/Parole Violator



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

- 10.1. In order to gain physical access to a parolee/parole violator, attorneys must acquire the appropriate gate clearance.
 - 10.1.1. County Jails:
 - 10.1.1.1. All counsel shall be responsible for coordinating their own gate clearance with county jail staff.
 - 10.1.2. DJJ Facilities and CDCR Institutions:
 - 10.1.2.1. The Attorney Panel: The Attorney Panel shall provide gate clearance information for all of its staff and contract attorneys who may represent juvenile parolees or parole violators. JPB shall provide this information to DJJ facilities and CDCR institutions in order to ensure continuous gate clearance. The Attorney Panel shall be responsible for immediately notifying the JPB of any additions or deletions from the list of counsel.
 - 10.1.2.2. Other Counsel: Counsel shall provide gate clearance information to the Juvenile Parole Board (JPB). The JPB shall provide this information to the DJJ facility or CDCR institution at which the attorney's client is housed in order to establish counsel's gate clearance.
- 10.2. When visiting a client housed at a DJJ facility, all attorneys shall comply with the DJJ Policy and Procedure entitled "Confidential Youth Visitation".
 - 10.2.1. Attorneys shall adhere to the security protocols established at each Youth Correctional Facility.
 - 10.2.2. Client visits shall not be scheduled on weekends or State holidays except by the mutual agreement of the facility and the attorney.
 - 10.2.3. Unless otherwise requested by the attorney, client visits shall occur in a confidential setting. At least one (1) confidential room shall be made available at every facility on a scheduled basis, Monday through Friday, from 8 a.m. - 5 p.m., except for State holidays. A DJJ employee shall not be present in the room when a confidential space is being used.
- 10.3. When scheduling a client visit, the attorney must provide:
 - 10.3.1. Name of the client
 - 10.3.2. The proposed date and length of the visit
- 10.4. Attorneys shall be able to participate in confidential telephonic communications with parolees by complying with the DJJ Policy and Procedure entitled "Confidential Telephone Access to Youth" (CN 302).
 - 10.4.1. Timeframes for telephone calls should respect the normal school day, workday, or any treatment groups scheduled for a youth.
 - 10.4.2. Telephone calls shall occur in a confidential setting.
 - 10.4.3. Attorneys are encouraged to establish a wide timeframe in which to receive a telephone call from a client.
 - 10.4.4. Immediate telephone contact shall be reserved for situations in which the client's attorney affirms an emergency exists such as in situations in which a response to a specific need cannot wait for prior authorization in writing.
- 10.5. When scheduling a confidential telephone call, the attorney must:



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

- 10.5.1. Submit a written, faxed, or e-mailed request to contact a client by telephone to the PAIII at the DJJ facility where the client is housed.
- 10.5.2. Indicate an available date and timeframe for receiving a telephone call from the client.
- 10.5.3. For an immediate telephone call, contact the PA III by telephone to secure assistance in arranging immediate telephone contact with the client, providing a general description of the emergency. (Note: legal counsel need not include information protected by the attorney-client or work product privileges).

- 10.6. The DJJ shall not unreasonably limit the time that an attorney spends with his client, subject to scheduling limitations or facility safety and security.

11.0 Access to a Client's files

- 11.1. Attorneys may review a client's files in preparation for a defense or for negotiating an appropriate disposition by complying with the DJJ Policy and Procedure entitled "Access to Youth Files and Information by Legal Counsel and Authorized Representatives" (CN297).
- 11.2. To conduct a file review on facility grounds, the attorney shall:
 - 11.2.1. Possess a signed DJJ 1.107 form, Authorization for Release of Information, or
 - 11.2.2. Possess the signed release or authorization required by State or Federal law applicable to the type of file requested that is signed by the appropriate person, youth or parent, or
 - 11.2.3. Be noted as the legal counsel of record in appropriate current court or Division of Juvenile Justice (DJJ) documents that are on file with a Youth Correctional Facility, or
 - 11.2.4. Be able to produce such documents upon request.
- 11.3. The attorney shall be permitted access to any file or document for review that is permitted by State or Federal law or a valid court order.
- 11.4. Before allowing the file review, the Parole Agent (PA) III or Litigation Coordinator shall first establish that no safety and security issues would arise if the attorney were permitted access. If there are no safety and security issues, the PAIII, Litigation Coordinator, any litigation or records employee shall then prepare the file to be reviewed, which could include redaction of particular information in accordance with Federal and State laws. Counsel shall be informed as to what was redacted and the reason for redaction. If there are safety and security issues, the document or specific portion of a document that presents such issues shall be redacted. The attorney shall be informed as to what was withheld and the reason for denying access to the particular document or portion of the document.
- 11.5. The attorney may have access to review or request copies of non-confidential sections of a parolee/parole violator's file in preparation for a defense or for negotiating an appropriate disposition in parole revocation or revocation extension proceedings.
 - 11.5.1. All requests shall be made to the JPB. Requests shall be granted no later than two (2) business days after having received the request.
 - 11.5.2. The custodian of record shall ensure that copies of relevant information requested from the parolee/parole violator's files shall be made within three (3) business days after receipt of the request.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

12.0 Administration of the Attorney Panel

12.1. This section applies only to the Attorney Panel with whom the DJJ contracts for the provision of appointed counsel. This Attorney Panel shall be independent from the California Department of Corrections and Rehabilitation (CDCR) and any of its divisions.

12.2. Scope and Compensation

12.2.1. The Juvenile Parole Board (JPB) recognizes that parolees who have disabilities or for whom effective communication methods must be used, require more attorney-client time for effective representation. The JPB is also cognizant of the fact that the court has found juvenile parolees to be a special class of persons who are unsophisticated and whose lack of education and skills make them unable to speak effectively for themselves regarding the complex issues presented in revocation proceedings.

12.2.2. Therefore, as an accommodation, the JPB shall compensate the Attorney Panel for three (3) additional hours of representation by appointed counsel for all parolees.

12.3. Proficiency of Attorney Panel Members

12.3.1. The Attorney Panel shall develop, implement, and administer a pool of California licensed attorneys to provide legal representation for juvenile parolees/parole violators during parole revocation/revocation extension proceedings. There shall, at all times, be sufficient members of the Attorney Panel to handle the number of cases on the Probable Cause and Revocation and Revocation Extension Hearing calendars to ensure all timeframes are met. The Attorney Panel shall ensure that attorneys comply with the DJJ policies and procedures to comply with scheduling, clearance and training requirements of the L.H. v. Schwarzenegger Stipulated Order for Permanent Injunctive Relief and shall be bound to strict confidentiality pertaining to hearings, hearing records, and administrative appeal records.

12.3.2. Pursuant to the L.H. v. Schwarzenegger Stipulated Order for Permanent Injunctive Relief, the Attorney Panel shall apply a minimum set of standards and guidelines for individual attorney representation, which shall cover the topics listed below:

12.3.2.1. Duty to Advise Clients Fully Regarding Options - See ABA Standards for Criminal Justice, Standard 4-5.1.

12.3.2.2. Client Decisions/Lawyer Decisions - See ABA Standards for Criminal Justice, Standard 4-5.2 "Control and Direction of the Case."

12.3.2.3. Protecting Confidentiality - See ABA Standards for Criminal Justice, Standard 4-3.1(b): "To ensure the privacy essential for confidential communication between defense counsel and client, adequate facilities should be available for private discussions between counsel and accused in jails, prisons, courthouses, and other places where accused persons must confer with counsel."

12.3.2.4. Duty to Keep Client Informed.

12.3.2.5. Effective Communication.

12.3.2.6. Identification of Mental or Physical Disabilities Requiring an Accommodation.

12.3.2.7. Negotiating Dispositions.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

- 12.3.2.8. Preserving Client's Fifth Amendment Rights.
 - 12.3.2.9. Advocating for Alternative Sanctions.
 - 12.3.2.10. Duty to Investigate - See ABA Standards for Criminal Justice, Standard 4-4.1, duty to investigate; NLADA Performance Guidelines for Criminal Defense Representation, Guideline 4.1 Investigation.
 - 12.3.2.11. Obtaining and Presenting Documents.
 - 12.3.2.12. Field File Review Substance and Procedure.
 - 12.3.2.13. Guidelines for Use of Confidential Information.
 - 12.3.2.14. Evaluating Mitigation Evidence / Duty to Investigate Mitigation.
 - 12.3.2.15. Selection and Interviews of Witnesses.
 - 12.3.2.16. Standards for Interviewing Witnesses, Including Limitations in the June 1, 2005 Order and August 4, 2005 Protective Order. (See attached). (See ABA Standards for Criminal Justice, Standard 4-4.2, 4-4.3, on witness interview limits.)
 - 12.3.2.17. Procedures for Motions, Documents and Objections.
 - 12.3.2.18. Final Revocation Hearing Preparation.
 - 12.3.2.19. Preserving Avenues of Appeal or Review.
 - 12.3.2.20. Administrative Appeal Preparation.
- 12.3.3. In order to ensure the competency of its contract attorneys, the Attorney Panel shall create an attorney evaluation process for hearing, investigating and resolving complaints about counsel. Additionally:
- 12.3.3.1. Parolees/parole violators can submit either compliments or complaints regarding the representation.
 - 12.3.3.2. The Attorney Panel can periodically but systematically observe the attorneys during the course of the representation.
- 12.3.4. The Attorney Panel shall terminate from employment any staff attorney or remove from the panel any contract attorney who consistently does not provide an appropriate level of service to his or her clients. The JPB also reserves the right to reject any personnel at any time with or without cause.
- 12.4. Tracking Database:
- 12.4.1. The Attorney Panel shall develop and maintain an electronic database for purposes of tracking the timeliness of revocation and revocation extension proceedings as well as administrative appeals. The information entered into the Attorney Panel's Tracking (APT) database, shall include but not be limited to:
- 12.4.1.1. The date that the Attorney Panel received the revocation (or revocation extension) packet
 - 12.4.1.2. The parolee's name and Youth Authority number.
 - 12.4.1.3. The parolee/parole violator's location.
 - 12.4.1.4. The date of the parole hold.
 - 12.4.1.5. The allegations and charges.
 - 12.4.1.6. The date of service of notices of rights and charges.
 - 12.4.1.7. The name of the assigned attorney.
 - 12.4.1.8. Parolee/parole violator's disabilities or need for effective communication, if any.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

- 12.4.1.9. Whether accommodations were first identified by the attorney.
 - 12.4.1.10. Whether accommodations were provided by the JPB.
 - 12.4.1.11. The Return to Custody Assessment (Revocation Extension Assessment), and the date it was provided.
 - 12.4.1.12. The date and time of the hearings (Probable Cause, Revocation, Revocation Extension).
 - 12.4.1.13. Whether the hearing date has been rescheduled, if so, how many times it may have been rescheduled and at whose request.
 - 12.4.1.14. The name of the hearing officers at each hearing.
 - 12.4.1.15. Optional Waivers.
 - 12.4.1.16. Optional Waiver Activations.
 - 12.4.1.17. Pleas that have been entered as to each charge.
 - 12.4.1.18. Case Dispositions, including CAPs and other alternatives to incarceration.
- 12.4.2. The APT must be able to generate reports at the request of the JPB on any of the data fields or combinations of those fields. The following reports would be required at a minimum:
- 12.4.2.1. Receipt of supplemental charges.
 - 12.4.2.2. Number of Cases Assigned to the Attorney Panel.
 - 12.4.2.3. Number of Hearings Conducted: Expedited Probable Cause Hearings, Probable Cause Hearings, Revocation Hearings, Revocation Extension Hearings.
 - 12.4.2.4. The number of cases "Not Closed" (count/list).
 - 12.4.2.5. Number of administrative appeals filed.
 - 12.4.2.6. Time Line Reports.
 - 12.4.2.7. Client Evaluation Form Reports.

FORM(S)

1. Subpoena, DJJ 1.300.
2. Request for Accommodation and Assistance, DJJ 3.260.
3. Accommodation and Assistance Grievance, DJJ 3.261.
4. Accommodation and Assistance Appeal, DJJ 3.261A.
5. Request for Witnesses, DJJ 3.271.
6. Parolee-Attorney Decision, DJJ 3.273.
7. Summary of Revocation Decision: Return to Custody Assessment, DJJ 3.276-RTCA.
8. Summary of RevEx Decision: Revocation Extension Assessment, DJJ 3.278-REA.
9. Optional Waiver Activation Card, DJJ 3.280.
10. Subpoena Duces Tecum, DJJ 3.287.
11. Appeal of Parole Revocation Decision, DJJ 3.290.
12. Request for Audio Recording, DJJ 3.293.
13. Intention of Counsel, DJJ 3.294.



DIVISION OF JUVENILE JUSTICE

Standards for Attorneys in Revocation Proceedings

Corrective Action/Board

14. Attorney of Record Designation, DJJ 3.295.
15. L.H. Protective Order Notice and Acknowledgement, DJJ 3.298.